

**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF HOUSING POLICY DEVELOPMENT**

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DATE: June 20, 2007

MEMORANDUM FOR: Planning Directors
Interested Parties

FROM: 
Cathy E. Creswell, Deputy Director
Division of Housing Policy Development

SUBJECT: **Application of Government Code Section 65584.09
(Chapter 614, Statutes of 2005 [AB 1233])**

AB 1233 (Jones), Chapter 614, Statutes of 2005, amended State housing element law to promote effective and timely implementation of local housing elements. This bill requires sites to be rezoned by prescribed deadlines when a jurisdiction fails to adopt an adequate housing element or fails to timely implement programs in its housing element to identify adequate sites pursuant to Government Code Section 65583(c)(1). Government Code Section 65584.09, which took effect on January 1, 2006, requires local governments to zone or rezone adequate sites, within the first year of the new planning period, to address any portion of the Regional Housing Needs Allocation (RHNA) for which the jurisdiction failed to identify or make available sites in the prior planning period. This memorandum is provided to assist local government in addressing the new requirement.

Government Code Section 65584.09 generally will not apply to local governments where the current element was found in compliance by HCD and either:

- the inventory of sites required by Section 65583(a)(3) identified adequate sites; or
- the program actions in the element to rezone or provide adequate sites were fully implemented and made available adequate sites.

Government Code Section 65584.09 will apply to local governments that:

- failed to adopt an updated housing element for the prior planning period;
- adopted a housing element found out of compliance by HCD due to their failure to substantially comply with the adequate sites requirement;
- failed to implement the adequate sites programs to make sites available within the planning period; or
- failed to identify or make available adequate sites to accommodate a portion of the regional housing need.

Key Provisions of Government Code Section 65584.09:

- Where a local government failed to identify or make adequate sites available in the prior planning period, the jurisdiction must zone or rezone adequate sites to address the unaccommodated housing need within the first year of the new planning period. In addition to demonstrating adequate sites for the new planning period, the updated housing element must identify the unaccommodated housing need by income level. To determine the unaccommodated need, jurisdictions could take the following steps:
 - Subtract the number of units approved or constructed (by income) since the beginning of the previous planning period's RHNA baseline date.
 - Subtract the number of units that could be accommodated on any appropriately zoned sites specifically identified in the element adopted for the previous planning period (not counted above).
 - Subtract the number of units accommodated on sites that have been rezoned for residential development pursuant to the site identification programs in the element adopted for the prior planning period.
 - Subtract the number of units accommodated on sites rezoned for residential development independent of the sites rezoned in conjunction with the element's site identification programs as described above.

Equals (=) the “unaccommodated housing need”

Example:

City “A” had a RHNA of 1,000 housing units. While the element demonstrated it had sufficient sites to accommodate 850 units, it contained a rezone program to accommodate the 150 unit remaining need for lower income households. By the time of the next housing element update, the City had not completed the rezoning as described in the housing element program action. Over the previous 5 years, 1,025 units were constructed (including 175 units affordable to lower-income households). Although the rezoning program was not completed using sites described in the element, the City was able to rezone a smaller 2 acre parcel to high density residential, which could accommodate 40 lower-income units.

| | <i>Very Low</i> | <i>Low</i> | <i>Moderate</i> | <i>Above Moderate</i> |
|--|------------------------|-------------------|------------------------|------------------------------|
| <i>RHNA</i> | <i>150</i> | <i>250</i> | <i>200</i> | <i>400</i> |
| <i>1) Units constructed</i> | <i>50</i> | <i>125</i> | <i>100</i> | <i>750</i> |
| <i>2) Previously identified sites currently available (Capacity)</i> | <i>25</i> | <i>50</i> | <i>100</i> | <i>N/A</i> |
| <i>3) Sites rezoned pursuant to Housing Element Program</i> | <i>0</i> | <i>0</i> | <i>N/A</i> | <i>N/A</i> |
| <i>4) Sites rezoned (other)</i> | <i>20</i> | <i>20</i> | <i>0</i> | <i>N/A</i> |
| <i>Remaining Need</i> | <i>55</i> | <i>55</i> | <i>0</i> | <i>N/A</i> |
| <i>Total Remaining Need</i> | <i>110</i> | | | |

As a result, City "A" has an unaccommodated need of 110 units for lower-income households and must identify or rezone sufficient sites to address this need within the first year of the new planning period.

- Once a determination has been made that an unaccommodated housing need exists, cities and counties must identify sites that are appropriately zoned, or will be appropriately zoned within the first year of the new planning period, to meet the unaccommodated housing need. For local governments within Southern California Association of Governments (SCAG), whose housing element updates are due no later than June 30, 2008, the rezones would need to be completed by June 30, 2009.
- The sites "made available" as part of the rezone program must comply with the site suitability requirements set forth in Government Code Section 65583.2 (Chapter 724, Statutes of 2004 [AB 2348]). Refer to the Department's AB 2348 technical assistance publication (dated June 9, 2005).
- Within the first year of the new planning period, cities and counties must adopt and complete program commitments to zone and/or rezone sites to address the unaccommodated housing need for the previous planning period for which sites were not identified. This requirement is **in addition** to the requirement to identify other specific sites to accommodate the RHNA for the new planning period. The jurisdiction may not count capacity on the same sites for both planning periods. This requirement is set forth in Government Code Section 65584.09(b) which states, *"the requirements under subdivision (a) shall be in addition to any zoning or rezoning required to accommodate the jurisdiction's share of the regional housing need pursuant to Section 65584 for the new planning period"*.

The Department hopes this information is helpful. For your assistance, on the following page, the specific language of Government Code Section 65584.09 is included. If you have any questions or would like additional information or technical assistance, please contact the Division of Housing Policy Development's Housing and Land-Use Specialists, Don Thomas or Paul McDougall, at (916) 445-4728.

Government Code Section 65584.09

- (a) For housing elements due pursuant to Section 65588 on or after January 1, 2006, if a city or county in the prior planning period failed to identify or make available adequate sites to accommodate that portion of the regional housing need allocated pursuant to Section 65584, then the city or county shall, within the first year of the planning period of the new housing element, zone or rezone adequate sites to accommodate the unaccommodated portion of the regional housing need allocation from the prior planning period.**
- (b) The requirements under subdivision (a) shall be in addition to any zoning or rezoning required to accommodate the jurisdiction's share of the regional housing need pursuant to Section 65584 for the new planning period.**
- (c) Nothing in this section shall be construed to diminish the requirement of a city or county to accommodate its share of the regional housing need for each income level during the planning period set forth in Section 65588, including the obligations to (1) implement programs included pursuant to Section 65583 to achieve the goals and objectives, including programs to zone or rezone land, and (2) timely adopt a housing element with an inventory described in paragraph (3) of subdivision (a) of Section 65583 and a program to make sites available pursuant to paragraph (1) of subdivision (c) of Section 65583, which can accommodate the jurisdiction's share of the regional housing need.**